Supreme Court, U.S.
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05-99

NO._____

IN THE SUPREME COURT
OF THE UNITED STATES

Richard Ducote,
Petitioner
vs.
Andrew Titelman, Craig Chandler, John Mayoue, Pamela Gray, and Diane Woods,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT - CASE NO. 03-14429

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the Court of Appeals err in failing to squarely address the question of whether the legal arguments advanced in the trial court by the Petitioner, who was sanctioned $84, 905.55 under Rule 11, F.R.C.P., to distinguish *Monroe v. Sigler*, 353 S.E.2d 23 (Ga. 1987) from the instant case were reasonable or nonfrivolous ?

2) Did the Court of Appeals err by rejecting the Petitioner's legal arguments attempting to distinguish *Monroe v. Sigler* from the instant case solely because the arguments cited Georgia intermediate appellate court decisions and dissenting opinions, none of which "actually create the exceptions to Monroe that [Petitioner] seeks to invoke" ?

3) Were Petitioner's legal arguments attempting to distinguish *Monroe v. Sigler* from the instant case so unreasonable as to invoke sanctions under Rule 11, F.R.C.P.?

LIST OF PARTIES & CORPORATE DISCLOSURE STATEMENT

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Michael R. Hirsh, Esq.
Wendy Jane Titelman
John Mayoue, Esq.
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Pamela Gray, Esq.
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CITATIONS TO OPINIONS AND ORDERS BELOW

Michael Hirsh and Richard Ducote v. Andrew Charles Titelman, Craig Chandler, et al., No. 03-14429, U.S. Court of Appeals for the Eleventh Circuit, February 8, 2005. Unreported. 2005 U.S.App. LEXIS 11350 [51-A]. Rehearing denied April 15, 2005 [63-A].

Wendy Jane Titelman v. Andrew Charles Titelman, Craig Chandler, et al, Civil Action No. 1:01-CV-1845-JOF. September 17, 2001 [1-A]; July 29, 2003 [31-A]; July 30, 2005 [49-A]. Unreported.

BASIS OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1) to review the Court of Appeals decision rendered on February 8, 2005. Rehearing and rehearing *en banc* was sought by Petitioner on March 1, 2005, and denied on April 15, 2005. The District Court exercised jurisdiction over the malicious prosecution complaint under 28 U.S.C § 1332.

RELEVANT STATUTE

Rule 11, F.R.C.P. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions [Relevant excerpts]

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the

attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An undersigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, and attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and...

(c) Sanctions. If after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation [emphasis added].

STATEMENT OF THE CASE

In this case, Petitioner attorney seeks to reverse the imposition of sanctions against him in the amount of $84, 905.55 by the United States District Court for the Northern District of Georgia on July 30, 2003, under the provisions of Rule 11, F.R.C.P. On July 13, 2001, Petitioner filed a malicious prosecution complaint in the District Court on behalf of Wendy Titelman, a Louisiana citizen, against the Respondents[1] Andrew Titelman, Craig Chandler, John Mayoue, Pamela Gray, and Diane Woods, all Georgia citizens, for malicious prosecution under Ga. Code Ann. § 51-7-40. Jurisdiction was based on diversity of citizenship under 28 U.S.C. §1332. The complaint alleged that the Respondents had maliciously caused her to be falsely prosecuted in the Cobb

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1. Respondent Titelman is Wendy Titelman's ex-husband, Craig Chandler is the law enforcement officer who secured the arrest warrant and testified before the grand jury returning the indictment, John Mayoue and Pamela Gray were Mr. Titelman's attorneys, and Diane Woods was the guardian *ad litem* for the Titelman daughters in the state court child custody case.

County, Georgia, Superior Court for "Interstate Interference With Custody" of her two daughters under the felony provisions of Ga. Code Ann. § 16-5-45 (c)(1). She was tried and acquitted April 21-25, 2001. Following the trial, the jury sent a scathing letter to the District Attorney and to the state court judge presiding over the custody case involving her two daughters condemning her prosecution as baseless. The jury also believed that Respondent Titelman had sexually molested two children, and that Respondent Woods and others had concealed the abuse.

This case turns on certain rulings by the state court judge presiding over the state court criminal trial denying Ms. Titelman's two motions for a directed verdict of acquittal. In *Monroe v. Sigler*, 256 Ga.759, 761, 353 S.E.2d23, 25 (1987), the Georgia Supreme Court held:

> When the trial judge, having heard all of the state's evidence, considers a motion on behalf of the accused (the accused being present and given the opportunity to be heard in support of the motion); and when the trial judge rules that the evidence is sufficient *as a matter of law* to support a conviction (that is, sufficient to enable a rational trier of fact to find each and every element of the guilt of the accused beyond a reasonable doubt), we can see no reason why such a holding- unreversed and in the absence of

> fraud or corruption- should not suffice as to the existence of probable case" [emphasis in original]

Thus, Ms. Titelman would have no valid malicious prosecution case under Georgia law if the judge presiding over her criminal trial had made rulings, in denying her directed acquittal verdict motions, which met the criteria set forth in *Monroe.* However, Judge Robert Flournoy, III the state judge presiding over Ms. Titelman's custody trial, never made any such rulings meeting the Monroe criteria. In the first motion for directed verdict at the close of the State's case on April 26, 2001, Ms. Titelman's attorney argued that she had every right to take her children across the state line, and, therefore, that she could not be convicted under the statute charging her. In response to that argument, Judge Fluornoy simply said the following:

> As to that ground, your directed verdict, I deny it. Okay. What's the next one? What's the next basis for your directed verdict? [4/25/01Transcript excerpt in record below, R-2-45, p. 6].

The next ground urged by Ms. Titelman was that the State did not offer any evidence that Ms. Titelman was unjustified in her actions. Judge Fluornoy's response was simply: